



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/623,241

07/18/2003

Jurgen Horn

100723-14 / Beil Wolff 29

2884

27384 7590 03/23/2007
NORRIS, MCLAUGHLIN & MARCUS, PA
875 THIRD AVENUE
18TH FLOOR
NEW YORK, NY 10022

EXAMINER

SRIVASTAVA, KAILASH C

ART UNIT

PAPER NUMBER

1657

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
----------------------------------------	-----------	---------------

3 MONTHS

03/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/623,241

Applicant(s)

HORN, JURGEN

Examiner

Dr. Kailash C. Srivastava

Art Unit

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-6, 8, 9, 15-20, 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 13 and 14 is/are rejected.
- 7) ☐ Claim(s) 7, 12 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicants' response and amendments filed 22 January 2007 to Office Action mailed 27 September 2006 is acknowledged and entered.
2. In view of applicants' remarks and amendment filed 22 January 2007, rejection under 35 U.S.C. § 103(a) to Claims 1-6, 8-9 and 12-14 in the Office Action mailed 27 September 2006 are hereby withdrawn.
3. The Art Unit Location for your application under prosecution at the United States Patent and Trademark Office (i.e., USPTO) has been changed to Art Unit 1657. To aid in correlating any papers for this application (i.e., 10/623,241), all further correspondence regarding this application should be directed to Examiner Kailash C. Srivastava in Art Unit 1657.

CLAIMS STATUS

4. Claims 10-11 remain cancelled.
5. Claims 15-23 have been added.
6. Claims 1-9 and 12-14 have been amended.
7. Claims 1-9 and 12-23 are pending and are examined on merits.

Objection To Specification

8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR §1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

The specification is objected to because it does not have support for the weight % for different components as claimed in Claims 1-9 and 12-23.

The claimed invention is drawn to a "hydrogen peroxide neutralizing, gamma-sterilizable, or gamma-sterilized nutrient medium" composition comprising casein soy peptone agar supplemented with sodium thioglycolate, sodium thiosulfate, sodium disulfite, sodium pyruvate, polyvinylpyrrolidone (i.e., PVP) in morpholinopropane sulfonic acid (i.e., MOPS) and phosphate buffer and said medium further supplemented with one among asparagine, betaine, cystine, glycine or proline and one among

bromocresol purple, bromocresol violet or bromothymol blue as pH indicators and a method to detect microorganisms in "hydrogen peroxide bearing air or on a hydrogen peroxide bearing surface".

From the record of the present written disclosure, the specification lacks the antecedence for concentration ranges claimed for each of the components claimed in Claims 1-9 and 12-23 because the percent concentrations of different components constituting nutrient medium compositions with respect to the agar described in Tables 1 and 2 are not in the same range as those claimed in Claims 1-9 and 12-23.

Objection To Claims

9. Claims 7, 12 and 21 are objected to for following reasons:

- In Claim 7, the limitation with respect to the buffer lacks sufficient antecedent basis because Claim 7 depends from Claim 1, which does not recite a buffer or a buffering salt. Appropriate correction is required.
- Word "a" renders Claim 12 unclear and vague because said word renders the claim grammatically incorrect. Appropriate correction is required.
- In Claim 21, the limitation with respect to the buffer lacks sufficient antecedent basis because Claim 21 depends from Claim 15, which does not recite a buffer or a buffering salt. Appropriate correction is required.

Claim Rejections- 35 U.S.C. § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

11. Claims 13-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claims 13 and 14 are rejected under 35 U.S.C. § 112, second paragraph because those claims do not further limit the subject matter claimed in Claim 12. Appropriate correction is required.


CONCLUSION

12. For the aforementioned reasons, Claims 13-14 are rejected and Claims 1-6, 8-9, 15-20 and 22-23 are allowed.

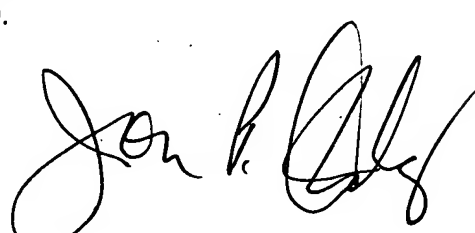
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Jon Weber can be reached at (571)-272-0925 Monday through Thursday 7:30 A.M. to 6:00 P.M. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 Kailash C. Srivastava, Ph.D.
Patent Examiner
Art Unit 1657
(571) 272-0923

8 March 2007


JON WEBER
SUPERVISORY PATENT EXAMINER